IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1080 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANJAR MUNICIPAL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR YS MANKAD for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.
MR RM CHHAYA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/12/2005

ORAL JUDGMENT

1.In the present petition, the Anjar Municipality has challenged an order dated 16-12-1999 passed by the Collector, Bhuj. The petitioner has also prayed for a

direction that the proceedings pending before the Collector being Mun-Case No. 25 of 2000 be quashed.

2.Short facts leading to the present petition can be noted :

2.1The petitioner Municipality claims ownership right over an open piece of land bearing survey no. 3500 situated within Anjar Town. It is the case of the petitioner that though the land bearing survey no. 3500 situated in Anjar town (here-in-after referred to as “the said land”) legally vests in the petitioner-Municipality, the respondent no.2 has decided to grant a portion thereof in favour of respondent no.3 by charging so called market price which is grossly inadequate. It is the case of the petitioner that by leasing out the entire survey no. 3500, the petitioner-Municipality had proposed to create a permanent means of earning revenue. The respondent no.2, Collector has prevented the petitioner from so doing in purported exercise of powers under section 258 of the Gujarat Municipalities Act (here-in-after referred to as “the said Act”). It is this twin action on part of the respondent no.2 Collector, Kutch that has aggrieved the petitioner to file the present petition.

3.As stated in the petition, the case of the petitioner is that the said land was to be leased by the petitioner to the State Bank of India for the purpose of construction of building which would have earned handsome income to the petitioner every month. The respondent no.2, Collector however, has intercepted at this stage and prevented the petitioner from dealing with the said land in any manner. Parallely, the respondent no.2 initiated the proceedings for grant of a portion of land admeasuring approximately 328 sq. mtrs. in favour of respondent no.3. On an application made by the respondent no.3 to the Collector for grant of such land for the purpose of construction a beauty parlour, the same was accepted by the Collector and market price of Rs. 1200/- per sq. mtr. was fixed and upon condition to pay the same to the Government, the Collector ordered the land to be granted to respondent no.3 by his order dated 07-12-1999.

4.The petitioner therefore, filed the present petition challenging the order dated 07-12-1999 passed by the Collector, Kutch and, thereafter, amended the petition to include the challenge against the pending proceedings before the Collector, preventing the

petitioner from dealing with the said land in any manner.

5. The Government has filed reply opposing the petition. It is stated inter-alia in reply filed by the Government that after following procedure, the land was granted in favour of respondent no.3 admeasuring 328 sq. mtrs. from out of city survey no.3500 of Anjar. It is stated that before granting the land, letters were written to the Anjar Municipality on 30-09-1998, 12-10-1998 and 26-10-1998, calling for “no objection” from the Anjar Municipality. However, there was no response from the Anjar Municipality. It had also come to the notice of the Government that Anjar Municipality was trying to dispose of the Government land illegally. The Deputy Collector therefore, made his representation and the opinion of Anjar Municipality is also called for. However, no response came from the Municipality. Once again on 23-04-1999, “no objection” was called for from Anjar Municipality. Here also there was no response from the Municipality. It is stated that District Valuation committee recommended the market price. It is further contended that the land in question was never allotted to Anjar Municipality, same never vested with the Municipality. A notification dated 10-11-1989 has

been placed on record by the learned AGP Shri Gori in which it is stated that the Government of Gujarat has decided to vest in the Municipalities, now forming part of the former Gujarat areas of the Erstwhile Bombay State, all open plots within the Municipal limits existing as on 31-12-1980 except those which are specifically reserved by Government for its own purpose. In exercise of powers contained in clause(a) of sub-section(2) of section 80 of the said Act, the Government therefore, vest in the Anjar Municipality all vacant plots and lands situated within the limits (existing as on 31-12-1980) of the said Municipality and belonging to the Government mentioned in Schedule No.I for local and other purposes except plots and land described in Schedule No.II annexed with the notification which are reserved by Government. It is further provided that the lands so vested in the Municipality shall be under the direction, management and control of the said Municipality and be held and applied by it as trustee subject to the provisions and for the purpose of the said Act. It is further provided that same shall belong to the said Municipality and be used by it for local purpose or could be disposed off by it subject to the terms and conditions mentioned in Government Resolution dated 22-04-1982 and the proceeds

derived from the said lands be utilised by the said Municipality for the purposes of the said Act. It is further provided that in terms of sub-section(3) of section 80 of the Act, the said plots and lands vested in the said Municipality shall be resumable by the Government if required by it, for any Government or public purpose, without any notice to the said Municipality.

6. In furtherance of the said notification dated 10-11-1999, a further detailed order was passed by the Collector on 30-01-1990 with which one finds Schedule.I and Schedule.II referred to in the notification dated 10-11-1998. Survey No.3500 of Anjar is found in statement-II (i.e. Schedule No.II)which is meant to be reserved by the Government.

7. Along the similar line respondent no.3, also filed an affidavit. In his affidavit he stated inter-alia that the petitioner applied to the Collector for grant of a small piece of land for the purpose of putting up a Gymnastic and a beauty centre. On the basis of Valuation Report, the price for the land was fixed and the petitioner had paid a sum of Rs.3,93,600/-. It is the case of the respondent no.3 that pursuant to the

order dated 07-12-1999, passed by the Collector the respondent no.3 had not only deposited the disputed amount but he was also handed over the possession of the plot in question.

8. From the above narration of the background facts, it can be seen that the short legal controversy that is required to be decided is whether the petitioner-Municipality was entrusted with the said land or whether the Government was the owner thereof. In other words, whether the land in question vests with the Municipality or whether the Government continued to be the owner thereof. Answer to this question would eventually decide the fate of this petition. If the petitioner-Municipality has been entrusted the plot in question by the Government, it was not open for the Government to deal with the same by allotting the same to respondent no.3. On the other hand, if the Court finds that land in question never vested with the Municipality, it would not be open for the Municipality to object to the Government divesting the same in favour of respondent no.3 after following legal procedure.

9. In this regard the contention of the learned advocate

for the petitioner has been that all open lands within the Municipal limits of Anjar vest in the Municipality. Reliance was sought to be placed on section 80 of the said Act. On the basis of provisions made in section 80 particularly those contained in sub-section(2) thereof, it was contended that any open lands situated within the municipal limits of Anjar town would vest unconditionally in the Municipality and it is only the Municipality which can deal with and dispose of the same in accordance with law. It is additionally contended that even if there was dispute between the Government and Municipality about the true ownership of the land in question, the issue should have been decided first under section 80 of the said Act or under section 37 of the Bombay Land Revenue Code before the Collector could have granted the same in favour of the respondent no.3. It is further contended that when the Municipality was dealing with its own property in accordance with the provisions of the said Act, the Collector could not have interfered in exercise of powers under section 258 of the said Act. Section 80 of the said Act reads as follows :

> " 80. Power to acquire and hold property for the purposes of the Act.-(1) A Municipality may acquire and hold property both movable and immovable, whether within or without the limits of the municipal borough.

(2)All property of the nature specified in the clauses to this section, not being specially reserved by the State Government, shall be vested in and belong to the municipality, and shall, together with all other property of whatever nature or kind, which may become vested in the municipality, be under its direction, management and control, and shall be held and applied by it as trustee, subject to the provisions and for the purposes of this Act:-

(a) All public town-walls, gates, markets, slaughter-houses manure and night soil depots.

(b) All public streams, tanks, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and other water works; and all bridges, buildings, engines, works materials, and things connected with or appertaining to such water works; and also any adjacent land, not being private property, appertaining to any public tank or well.

(c) All public sewers and drains; all sewers, drains, tunnels, culverts, gutters, and water-courses in, alongside or under any street, and all works, materials and things appertaining thereto; all dust, dirt, dung, ashes refuse, animal matter, filth or rubbish of any kind collected by the Municipality from the streets, houses privies, sewers, cesspools or elsewhere.

(d) All public lamps, lamp-posts and apparatus connected therewith, or appertaining thereto.

(e) All lands and public buildings transferred to it by the Government by gift or otherwise, for local public purposes.

(f) All public streets and the pavements, stones and other materials thereof and also all trees, erections, materials, implements and things provided for such streets:

Provided that lands and public building transferred to the municipality by the State Government under clause(e) shall not, unless otherwise expressly provided in the instrument of transfer, belong by right of ownership to the municipality but shall vest in it subject to the terms and conditions of the transfer,

and on the breach of any of the said terms or conditions the lands with all things attached thereto, including all fixtures and structures thereon and the public buildings shall revest in the State Government and it shall be lawful for the State Government to resume possession thereof.

(3)Where any open site or waste, vacant or grazing land vesting in Government has been vested by Government in a municipality whether before or after the commencement of this Act, then it shall be lawful for the State Government to resume at any time such site or land, if it is required by it for any public purpose.

(4)In the event of the resumption of any land, building or site under sub-section(2) or (3) by the State Government otherwise than only for a breach of a condition on which the same was held by the municipality, the municipality shall be entitled to compensation equal to the value of any improvement of such land, building or site by municipality and such value shall be determined in accordance with the provisions of the Land Acquisition Act, 1894(I of 1894)

10. From perusal of section 80 and in particular sub-section (2) of section 80, of the said Act, it would become clear that all property of the nature specified in the clauses (a) to (f) of sub-section(2) of section 80 which are not specially reserved by the State Government, shall be vested in and belong to the municipality and its direction, management and control shall vest with the Municipality and the Municipality shall hold and apply the same as trustee, subject to the provisions and for the purposes of this Act. Clauses (a) to (f) of sub-section(2) of Section 80

include all public town-walls, gates, markets, slaughter-houses manure and night soil depots, all public streams, tanks, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, etc., all public sewers and drains; all sewers, drains, tunnels, culverts, gutters, etc., all public lamps, lamp-posts and apparatus connected therewith, or appertaining thereto, all lands and public buildings transferred to it by the Government by gift or otherwise, for local public purposes, all public streets and the pavements, stones and other materials thereof and also all trees, erections, materials, implements and things provided for such streets. It can thus be seen that the lands which are automatically vested in the Municipality has been enlisted in sub-section(2) of section 80. Clause(e) of sub-section(2) of section 80 also makes provisions for all lands and public buildings to be transferred to the Municipality by the Government by gift or otherwise, for local public purposes. The contention of the learned advocate for the petitioner that by virtue of sub-section (2) of section 80 of the said Act, all open lands within the limits of the Municipality would automatically vest in the Municipality, cannot be accepted. If that be so, at-least a part of clause(e) of sub-section(2) of

section 80 would be rendered nugatory. In-fact what is sought to be vested in the Municipality by virtue of sub-section (2) of section 80 of the said Act are those lands and other properties enlisted therein. If over and above such lands and properties enumerated under different clauses to sub-section (2) of section 80 are sought to be vested in the Municipality by the Government, the Government has to pass a specific order therefore.

11.It is precisely because of this reason that the State Government has passed notification with respect to different Municipalities from time to time vesting open lands in such Municipality subject to certain conditions. In the decision of the Learned Single Judge in the case of Porbandar Nagarpalika v/s. State of Gujarat & ors. reported in 1991(2) GLR 991, certain notifications issued by the State Government have been taken note of. Relying on the notification of 1950 and a subsequent notification of 1955, learned Judge was of the view that all open plots of land situated within the municipal limits of the petitioner-Nagarpalika (in that case Porbandar Nagarpalika) vest in and belong to it and therefore, it has a right to dispose of the same by sale, lease etc., of course subject to the

provisions and for the purposes of the Act. It was in this context observed that so long as they continue to vest in the petitioner-Municipality, neither the State Government nor the Collector would have power to deal with such open plots of land. The decision of the Learned Single Judge of this Court in the case of Porbandar Nagarpalika v/s. State of Gujarat & ors. (Supra) was followed by Learned Single Judge of this Court in the case of Parshottambhai G. Chavda v/s. State of Gujarat & ors. reported in 1998(2) GLR 1048 . It is not in dispute that notifications of 1950 and 1955 referred to by this Court in the above mentioned decisions did not cover Anjar Municipality in so far as the question of grant of open plots of land is concerned. Historically, Anjar was part of Kutch area of Bombay State which was merged in the Gujarat State upon bifurcation of the State. Anjar Municipality therefore, was granted several open pieces of lands by State Government by its notification dated 10-11-1989. As noted, the notification dated 10-11-1989 granted of open land situated within the Anjar Municipal limits as mentioned in Schedule no.I. However, the notification excluded those lands which were mentioned in schedule no.II and the lands were reserved by the Government. The learned advocate for the petitioner has not

disputed that survey no. 3500 is mentioned in statement no.2. It would thus appear that by virtue of notification dated 10-11-1989, several plots of land vested in Anjar Municipality, but the disputed survey no. 3500 was not so vested. Other than notification dated 10-11-1989, there is no further material produced by the petitioner to establish its case that the land in question was vested in the Municipality. Combined reading of provisions of section 80 of the said Act and notification dated 10-11-1989 would make it clear that plot bearing survey no. 3500 of Anjar was never vested in Anjar Municipality by the State Government. All through out State Government therefore, continued to be the owner thereof and was free to deal with same in accordance with law.

12.The learned advocate for the petitioner canvassed before this Court that land could not have been resumed by the Government otherwise than for the public purpose, and in case of dispute regarding title thereof, it ought to have been resolved under section 80 of the said Act or under section 37 of the Bombay Land Revenue Code. Both of these contentions need to be turned down. Firstly it is not the case of resumption of land by the Government. The land which is once

vested in the Municipality is subject to being resumed by the Government. In the present case when this Court has come to the conclusion that the land never vested in the Municipality, there is no consequential question of resumption thereof by the Government. In so far as the dispute regarding ownership is concerned, the petitioner has laid no firm foundation to stake its claim of ownership of land in question. Except for relying on the provisions of section 80 of the said Act, no material has been placed before this court to suggest as to the manner in which the land was vested in the Municipality. Interpretation of section 80 of the said Act as sought to be canvassed by the learned advocate for the petitioner has been turned down by me. In that view of the matter I find no material on record to come to the conclusion that the petitioner had even made out a prima facie case of its title over the land in question. This in addition to the petitioner not responding to the notices issued by the Collector calling for its response with respect to the land in question, would prevent the petitioner from urging before this Court that the Collector should have initiated the proceedings under section 80 of the said Act or under section 37 of the Bombay Land Revenue Code. The petitioner instead of joining issue with the

Collector for urging the Collector to decide the question of ownership of land in question, remained silent when notices were issued by the Collector. Having thereafter, taken the stand to challenge the legality of the action of the Collector by filing the present petition, it is rather too late in the day for the petitioner to urge that the Collector should have taken proceedings under section 80 of the said Act or under section 37 of the Bombay Land Revenue Code and decided the question of ownership of land in question before dealing with the same. If at all it was open for the petitioner to move the Collector for such an inquiry, the petitioner instead chose to file the present petition. This Court has examined all legal aspects and come to the conclusion that the land was never vested with the petitioner. In that view of the matter, it is not possible to accept the contention of the learned advocate for the petitioner. The decision rendered in the case of K.C. Patel v/s. State of Gujarat & ors. reported in 1998(4)GCD 2914(Guj) is based on the facts of the said case. In the said case there was a notification issued by the Government which showed that the disputed land was once vested in the Municipality. It was in that background that this Court directed the Collector to examine the question of title

of land in question in larger public interest.

13. In the result, I find that the petitioner has not been able to legally demonstrate any title over the land in question. The Government all through out continued to enjoy the ownership thereof. The land was never vested in the Municipality. The Municipality therefore, could not have objected to the same being dealt with by the Collector. The legality and propriety of the action of the Collector, I have not examined since this is not a public interest litigation. Subject to the above observation, petition is rejected. Rule is discharged with no order as to costs.

14. At this stage, at the request of the learned advocate for the petitioner, this order shall stand stayed till 13th January, 2006.

(Akil Kureshi,J.)

(raghu)